

Tennessee Judicial Nominating Commission
Application for Nomination to Judicial Office

Rev 22 December 2011

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INTRODUCTION

Tennessee Code Annotated section 17-4-101 charges the Judicial Nominating Commission with assisting the Governor and the People of Tennessee in finding and appointing the best qualified candidates for judicial offices in this State. Please consider the Commission's responsibility in answering the questions in this application questionnaire. For example, when a question asks you to "describe" certain things, please provide a description that contains relevant information about the subject of the question, and, especially, that contains detailed information that demonstrates that you are qualified for the judicial office you seek. In order to properly evaluate your application, the Commission needs information about the range of your experience, the depth and breadth of your legal knowledge, and your personal traits such as integrity, fairness, and work habits.

This document is available in word processing format from the Administrative Office of the Courts (telephone 800.448.7970 or 615.741.2687; website <http://www.tncourts.gov>). The Commission requests that applicants obtain the word processing form and respond directly on the form. Please respond in the box provided below each question. (The box will expand as you type in the word processing document.) Please read the separate instruction sheet prior to completing this document. Please submit the completed form to the Administrative Office of the Courts in paper format (with ink signature) *and* electronic format (either as an image or a word processing file and with electronic or scanned signature). Please submit fourteen (14) paper copies to the Administrative Office of the Courts. Please e-mail a digital copy to debra.hayes@tncourts.gov.

THIS APPLICATION IS OPEN TO PUBLIC INSPECTION AFTER YOU SUBMIT IT.

PROFESSIONAL BACKGROUND AND WORK EXPERIENCE

1. State your present employment.

Member/Partner at Leitner, Williams, Dooley & Napolitan, P.L.L.C. I am a full-time attorney practicing civil litigation.

2. State the year you were licensed to practice law in Tennessee and give your Tennessee Board of Professional Responsibility number.

1992; BPR No. 015552

3. List all states in which you have been licensed to practice law and include your bar number or identifying number for each state of admission. Indicate the date of licensure and whether the license is currently active. If not active, explain.

Tennessee (1992); BPR No. 015552

4. Have you ever been denied admission to, suspended or placed on inactive status by the Bar of any State? If so, explain. (This applies even if the denial was temporary).

No. Not applicable.

5. List your professional or business employment/experience since the completion of your legal education. Also include here a description of any occupation, business, or profession other than the practice of law in which you have ever been engaged (excluding military service, which is covered by a separate question).

In 1992, I was employed as an associate attorney at Arnett, Draper & Haggood in Knoxville, Tennessee. I practiced civil litigation and trial work there until 1999. I moved to Baker, McReynolds, O'Kane, Townsend & Sheu and did the same until 2001. In 2001, I moved to Leitner, Williams, Dooley & Napolitan, P.L.L.C. as of counsel, working and training associates in civil litigation. I became a partner in 2004. Each time I moved before, I generally did so in order to give myself the opportunity to work on more complex litigation. I have also written a number

of articles and have a regular column in *DICTA*, the Knoxville Bar Association Journal (generally 4 times per year).

6. If you have not been employed continuously since completion of your legal education, describe what you did during periods of unemployment in excess of six months.

I have always been employed; not applicable.

7. Describe the nature of your present law practice, listing the major areas of law in which you practice and the percentage each constitutes of your total practice.

I practice civil litigation, torts and contracts. I also practice employment law, products liability and personal injury. The following is an estimate of percentages of each area:

Contract litigation: 15%

Other Tort: 15%

Personal Injury: 30%

Employment: 20%

Products Liability: 20%

8. Describe generally your experience (over your entire time as a licensed attorney) in trial courts, appellate courts, administrative bodies, legislative or regulatory bodies, other forums, and/or transactional matters. In making your description, include information about the types of matters in which you have represented clients (e.g., information about whether you have handled criminal matters, civil matters, transactional matters, regulatory matters, etc.) and your own personal involvement and activities in the matters where you have been involved. In responding to this question, please be guided by the fact that in order to properly evaluate your application, the Commission needs information about your range of experience, your own personal work and work habits, and your work background, as your legal experience is a very important component of the evaluation required of the Commission. Please provide detailed information that will allow the Commission to evaluate your qualification for the judicial office for which you have applied. The failure to provide detailed information, especially in this question, will hamper the evaluation of your application. Also separately describe any matters of special note in trial courts, appellate courts, and administrative bodies.

While employed at Arnett, Draper & Hagood, I worked closely with Foster D. Arnett, Sr. in defending local hospitals in medical malpractice actions as well as working extensively in the area of peer review. I helped Mr. Arnett with research and drafting various versions of peer review laws that were included in legislative amendments to the peer review statutes, importantly, the state recognition and coordination of the Health Care Quality Improvement Act of 1986 and its due process provisions. I also worked in the areas of insurance defense and personal injury. I wrote the appellee brief and helped in the case of *Cardin v. Campbell*, 920 S.W.2d 222 (Tenn. Ct. App. 1995), perm. app. denied (Tenn. April 29, 1996) regarding the doctrine of judicial estoppel in Tennessee. I spent a great deal of time during the early years defending personal injury and medical/hospital malpractice actions.

By 1999, I had the opportunity to work with Baler, McReynolds in some different areas, including more contractual issues and declaratory judgment actions. I also continued to work in personal injury and products liability litigation. Many of the cases were more complicated. The attraction was also the fact that I was generally the lead attorney working on those cases and had the opportunity, not only for more client contact, but the opportunity to have the final say in how the litigation as conducted. It was a learning experience that continued with Leitner, Williams, Dooley & Napolitan, PLLC (hereinafter, "LWDN"). In late 2000, I agreed to move to LWDN. The office was primarily engaged in worker's compensation defense. The managing partner wanted me to help increase liability lawsuits and to mentor younger associates in training them to be able to perform jury trials. I found it a challenge. I also spent the first 8 years handling cases that came in "7 boxes at a time." Needless to say, I spent a lot of time in the library, in depositions and in the courtroom.

There have been a number of cases that I have had the opportunity to work on at the appellate level. Two of them stand out as particularly interesting. (Actually, there are some others, but I am sure "brevity is the soul of wit" here.). *Kilgore v. Carson Pirie Holdings, Inc.*, 205 Fed. Appx. 367, 2006 WL 3253490 (6th Cir. 2006) (department store injury on an escalator) was interesting due to the fact that I was able to explore and help firm up the *Daubert* expert "gate-keeping" doctrine somewhat. Essentially, the Court upheld the lower court's exclusion of an expert on several key *Daubert* grounds. Moreover, although summary judgment was reversed at the 6th Circuit, the Court agreed with my analysis that Tennessee, if directly confronted with the question, would not, use a heightened common carrier analysis to a stationary escalator but it would use an ordinary negligence standard instead. That ruling, although not binding on Tennessee Courts, is the only ruling on that question and hopefully would provide some help if Tennessee courts ever directly address the issue.

Lawson, et al v Edgewater Hotels, Inc., 167 S.W.3d 816 (Tenn Ct. App. 2004), perm. app. denied (Tenn., May 2, 2005), a case I argued in front of the Eastern Section was notable for number of reasons, but for the sake brevity, is important to me personally because it was cited by the Tennessee Supreme Court as an example of how to obtain summary judgment (actually partial) in *Hannan, et al. v. Alltel Publishing Co.*, 270 S.W.3d 1, fn.5 (Tenn. 2008).

9. Also separately describe any matters of special note in trial courts, appellate courts, and

administrative bodies.

I have had the opportunity to have a number of jury trials in the past, and argue numerous motions and summary judgment motions. A great deal of my practice has involved the study of the law and writing. I do not have lot of experience with administrative bodies in the employment law area. I have participated in a number of EEOC investigation and have written a number of position statements, al resulting in no follow up charges by either the EEOC or the THRC.

10. If you have served as a mediator, an arbitrator or a judicial officer, describe your experience (including dates and details of the position, the courts or agencies involved, whether elected or appointed, and a description of your duties). Include here detailed description(s) of any noteworthy cases over which you presided or which you heard as a judge, mediator or arbitrator. Please state, as to each case: (1) the date or period of the proceedings; (2) the name of the court or agency; (3) a summary of the substance of each case; and (4) a statement of the significance of the case.

None; not applicable.

11. Describe generally any experience you have of serving in a fiduciary capacity such as guardian ad litem, conservator, or trustee other than as a lawyer representing clients.

None; not applicable.

12. Describe any other legal experience, not stated above, that you would like to bring to the attention of the Commission.

While at Harvard Law school, I represented a number of criminal indigents in Roxbury District Court pursuant to 3rd year practice rules and was allowed to perform bail hearings all three years of laws school as part of the Harvard Defenders. I have also written a number of legal articles for various small publications, including a firm newsletter to clients and/or the public at large.

13. List all prior occasions on which you have submitted an application for judgeship to the Judicial Nominating Commission or any predecessor commission or body. Include the specific position applied for, the date of the meeting at which the body considered your application, and whether or not the body submitted your name to the Governor as a nominee.

None; not applicable.

EDUCATION

14. List each college, law school, and other graduate school which you have attended, including dates of attendance, degree awarded, major, any form of recognition or other aspects of your education you believe are relevant, and your reason for leaving each school if no degree was awarded.

1. University of Tennessee, Knoxville (B.A., 1989) summa cum laude; outstanding college students of America, 1987 and 1989, Golden Key Honor Society; Phi Kappa Phi; Chancellor's Citation (Extraordinary Academic Achievement), 1989.
2. Harvard Law School 1989-1992, Juris Doctorate 1992 with honors.

PERSONAL INFORMATION

15. State your age and date of birth.

52; March 21, 1960

16. How long have you lived continuously in the State of Tennessee?

All my life except August 1989-June 1992 (law school).

17. How long have you lived continuously in the county where you are now living?

All my life except August 1989-June 1992 (law school).

18. State the county in which you are registered to vote.

Knox County, Tennessee

19. Describe your military Service, if applicable, including branch of service, dates of active duty, rank at separation, and decorations, honors, or achievements. Please also state whether you received an honorable discharge and, if not, describe why not.

1978; U.S.M.C.; Pvt., honorable discharge.

20. Have you ever pled guilty or been convicted or are you now on diversion for violation of

any law, regulation or ordinance? Give date, court, charge and disposition.

No; not applicable.

21. To your knowledge, are you now under federal, state or local investigation for possible violation of a criminal statute or disciplinary rule? If so, give details.

No; not applicable.

22. If you have been disciplined or cited for breach of ethics or unprofessional conduct by any court, administrative agency, bar association, disciplinary committee, or other professional group, give details.

No; not applicable.

23. Has a tax lien or other collection procedure been instituted against you by federal, state, or local authorities or creditors within the last five (5) years? If so, give details.

No; not applicable.

24. Have you ever filed bankruptcy (including personally or as part of any partnership, LLC, corporation, or other business organization)?

No; not applicable.

25. Have you ever been a party in any legal proceedings (including divorces, domestic proceedings, and other types of proceedings)? If so, give details including the date, court and docket number and disposition. Provide a brief description of the case. This question does not seek, and you may exclude from your response, any matter where you were involved only as a nominal party, such as if you were the trustee under a deed of trust in a foreclosure proceeding.

I was divorced in Knox County in 1986; it was an agreed divorce. My wife left my daughter and me. We both had joint custody. I later had full custody. I was essentially a single parent taking care of my daughter, working and to school until I met my present wife. We both raised Rebekah after we got married. I do not recall the docket number, and could not locate the record.

26. List all organizations other than professional associations to which you have belonged within the last five (5) years, including civic, charitable, religious, educational, social and fraternal organizations. Give the titles and dates of any offices which you have held in such organizations.

Knoxville Bar Association; Tennessee Bar Association; Defense Research Institute; Tennessee Defense Lawyers Association; Hamilton-Burnett Inns of Court.

27. Have you ever belonged to any organization, association, club or society which limits its membership to those of any particular race, religion, or gender? Do not include in your answer those organizations specifically formed for a religious purpose, such as churches or synagogues.

- a. If so, list such organizations and describe the basis of the membership limitation.
- b. If it is not your intention to resign from such organization(s) and withdraw from any participation in their activities should you be nominated and selected for the position for which you are applying, state your reasons.

No; not applicable.

ACHIEVEMENTS

28. List all bar associations and professional societies of which you have been a member within the last ten years, including dates. Give the titles and dates of any offices which you have held in such groups. List memberships and responsibilities on any committee of professional associations which you consider significant.

Knoxville Bar Association 1992-present, associate editor, Publications Committee (DICTA).

Tennessee Bar Association 1992-present.

Defense Research Institute 2004 -present; Employment Law Committee 2004-2006

Tennessee Defense Lawyers Association 2012

Hamilton Burnett Inns of Court 2012

29. List honors, prizes, awards or other forms of recognition which you have received since your graduation from law school which are directly related to professional accomplishments.

Martindale Hubble BV; applying for an AV rating.

Who's Who (Stratmore)

30. List the citations of any legal articles or books you have published.

1. "Yes, Virginia, There is a Protected Future Medicare Interest in Liability Settlements," Legal Mythbreakers, DICTA (Knoxville Bar Association Journal) November 2012 (to be published).
2. "The Country's Going to Hades" Legal Mythbreakers, DICTA, February 2012.
3. "Subsection (j) and Vicarious Liability," Legal Mythbreakers, DICTA December 2011.
4. "Feeding the Bear is OK If You Play It Safe" Legal MythBreakers, DICTA (KBA Journal), September 2011.
5. "I Just Wanna Be an Ole Country Lawyer," Legal Mythbreakers, DICTA August 2010.
6. "Can You Swear in the Witness?" Legal MythBreakers, DICTA May 2011
7. "Strict Proof Is Demanded?", Legal Mythbreakers, DICTA, August 2009
8. "The ADA Amendments Act: Adding More Than Just Two A's," Knoxville Business Journal (2010).

31. List law school courses, CLE seminars, or other law related courses for which credit is given that you have taught within the last five (5) years.

None.

32. List any public office you have held or for which you have been candidate or applicant. Include the date, the position, and whether the position was elective or appointive.

None.

33. Have you ever been a registered lobbyist? If yes, please describe your service fully.

No; not applicable.

34. Attach to this questionnaire at least two examples of legal articles, books, briefs, or other legal writings which reflect your personal work. Indicate the degree to which each example reflects your own personal effort.

See attached.

ESSAYS/PERSONAL STATEMENTS

35. What are your reasons for seeking this position? (150 words or less)

The critical love I have of this profession is the study of law. I enjoy my litigation practice. I enjoy my colleagues. My greatest passion, however, is the consideration and study of the process. As I grow older, I also feel more capable of contributing to the profession with the pen as opposed to the argument. I feel the need to move forward to another level of practice. I am not by nature, a political animal. I would probably be considered by most persons to be a quiet person that does not seek out the public eye. It is my desire to give back to the profession that has allowed so much joy and growth in my life. I want to help make a better place in Tennessee for all its citizens. As a judge, I feel I can help the citizens of Tennessee. In America, law is king, as eloquently put many years ago by Thomas Paine. I believe that law is king, but I also believe judges are not kings and queens. Their duty is to service the law and honor it. They should guard zealously the processes by which duly constitutional laws are made. I want to do that very thing.

36. State any achievements or activities in which you have been involved which demonstrate your commitment to equal justice under the law; include here a discussion of your pro bono service throughout your time as a licensed attorney. (150 words or less)

I have taken on a number of pro bono cases through the years. Most of the cases involve helping clients stay out of litigation if possible. Some of it involved dealing with used car dealers that tried to pass off "as is" language to under-educated buyers. While I am a staunch supporter of the right to contract, a contract implies that all parties understand certain basic facts and one party is not being defrauded. I generally have helped some persons with criminal matters in the early days. I admit I have been extremely busy in the last few years and a lot of pro bono activities have dropped off. I try to make up for it by charitable contributions, but I admit I should do more.

37. Describe the judgeship you seek (i.e. geographic area, types of cases, number of judges, etc. and explain how your selection would impact the court. (150 words or less)

I would like to seek the Appellate Position of Justice Franks on the Eastern Section Court of Appeals. I believe I would be able to help the Court if hard work and dedication to the task are needed. I have always strived to do so in any other job I have worked. I think my resume shows that I like to write and study the law. I have experience in civil law. Moreover, I have an

academic acumen suited to the task. In terms of impact to the Court, I would approach all cases with a fresh eye, and I would strive to always apply the law as opposed to my own notions.

38. Describe your participation in community services or organizations, and what community involvement you intend to have if you are appointed judge? *(250 words or less)*

My wife and I have a sixteen year old autistic son. I love him dearly, and I would not lose him for all of God's world. However, he has very limited capabilities. My wife and I have to stay with him. He cannot be left alone. I work all week and she works on the weekends as a nurse. We try to go to church when we can do so reasonably. We contribute to Second Harvest and Knoxville Area Rescue Ministries. Given our family situation, we have not had the opportunity to participate in very many community organizations. I intend to continue participating in Hamilton Burnett Inns of Court.

39. Describe life experiences, personal involvements, or talents that you have that you feel will be of assistance to the Commission in evaluating and understanding your candidacy for this judicial position. *(250 words or less)*

I grew up in North Knoxville in a poor home. I had wonderful parents that have passed in recent years. I left home at 18 because I had two younger brothers. I have had a job since 14 (paper carrier, unless you count the lawn mowing service since 8). I worked at a meat packing facility, KFC, and the Tennessee School for the Deaf, to name a few jobs. I worked through undergraduate and paid for my own law school. I started college at 24 and graduated law school at 32. I lived in leaky apartments and even in my car for a while. I have been so emotionally low and bereft at times I could barely feel anything. I have been on top of the world, especially the day my future wife told me she loved me. In other words, I am a regular person that gets up, works and tries not to give up. In the end, the only thing special about a Judge is the person under the robe. That is true of everything. I promise best efforts, which is what I have always tried to do.

40. Will you uphold the law even if you disagree with the substance of the law (e.g., statute or rule) at issue? Give an example from your experience as a licensed attorney that supports your response to this question. *(250 words or less)*

I will uphold the law no matter whether I agree with it or not. If every person allowed their "feeling" to potentially trump the law, there would be no law. As an attorney, I am faced with this every day. I do not always agree with the Judge (unless of course, He or she agrees with me, but that is the point). I want my client to win. Every time. However, that does not always happen. When it does not, I have to perform as an officer of the court, show respect and uphold the final ruling of the court system. I do it, and so do my brothers and sisters in the law.

REFERENCES

41. List five (5) persons, and their current positions and contact information, who would recommend you for the judicial position for which you are applying. Please list at least two persons who are not lawyers. Please note that the Commission or someone on its behalf may contact these persons regarding your application.

Brad A. Fraser (Member) Leitner, Williams, Dooley & Napolitan, PLLC, Knoxville,
[REDACTED]

J. Gregory Crisban, Jackson Lewis, LP; [REDACTED]
[REDACTED]

John A. Willis, attorney-at-law; Fox & Farley; [REDACTED]
[REDACTED]

Marsha Wilson, Director, Knoxville Bar Association, [REDACTED]
[REDACTED]

Angela May, Paralegal; Leitner, Williams, Dooley & Napolitan, PLLC; [REDACTED]
[REDACTED]

AFFIRMATION CONCERNING APPLICATION

Read, and if you agree to the provisions, sign the following:

I have read the foregoing questions and have answered them in good faith and as completely as my records and recollections permit. I hereby agree to be considered for nomination to the Governor for the office of Judge of the [Court] _Eastern Section Court of Appeals of Tennessee, and if appointed by the Governor, agree to serve that office. In the event any changes occur between the time this application is filed and the public hearing, I hereby agree to file an amended questionnaire with the Administrative Office of the Courts for distribution to the Commission members.

I understand that the information provided in this questionnaire shall be open to public inspection upon filing with the Administrative Office of the Courts and that the Commission may publicize the names of persons who apply for nomination and the names of those persons the Commission nominates to the Governor for the judicial vacancy in question.

Dated, October 19, 2012

s/ David E. Long
Signature

When completed, return this questionnaire to Debbie Hayes, Administrative Office of the Courts, 511 Union Street, Suite 600, Nashville, TN 37219.



TENNESSEE JUDICIAL NOMINATING COMMISSION

511 UNION STREET, SUITE 600
NASHVILLE CITY CENTER
NASHVILLE, TN 37219

**TENNESSEE BOARD OF PROFESSIONAL RESPONSIBILITY
TENNESSEE COURT OF JUDICIARY
AND OTHER LICENSING BOARDS**

WAIVER OF CONFIDENTIALITY

I hereby waive the privilege of confidentiality with respect to any information which concerns me, including public discipline, private discipline, deferred discipline agreements, diversions, dismissed complaints and any complaints crased by law, and is known to, recorded with, on file with the Board of Professional Responsibility of the Supreme Court of Tennessee, the Tennessee Court of Judiciary and any other licensing board, whether within or outside the state of Tennessee, from which I have been issued a license that is currently active, inactive or other status. I hereby authorize a representative of the Tennessee Judicial Nominating Commission to request and receive any such information and distribute it to the membership of the Judicial Nominating Commission.

David Edward Long
Type or Printed Name

s/David E. Long
Signature

October 19, 2012
Date

TN BPR 015552
BPR #

Please identify other licensing boards that have issued you a license, including the state issuing the license and the license number.
